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Filing date: **01/27/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203277
Party	Plaintiff 3D International, LLC
Correspondence Address	THOMAS COOK THOMAS COOK INTELLECTUAL PROPERTIES 3030 BRIDGEWAY, SUITE 425-430 SAUSALITO, CA 94965 UNITED STATES tom@thomascooklaw.com, thomascooklaw@pacbell.net
Submission	Opposition/Response to Motion
Filer's Name	Thomas W. Cook
Filer's e-mail	tom@thomascooklaw.com
Signature	/Thomas W. Cook/
Date	01/27/2014
Attachments	2014 01 27 - 3D International, Inc. RESPONSE - Nos. 91203277 & 912032790.pdf(177395 bytes)

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial Nos. 85261047 & 85312684

4 Mark: AUTOPIA FORUM; AUTOPIAFORUMS

6
7 3D INTERNATIONAL, LLC, a
8 California limited liability company.

9 Opposer,

10 v.

11 PALM BEACH MOTORING
12 ACCESSORIES, INC.,
13 a Florida corporation

14 Applicant.

Opposition Nos. 91203277 (parent)
91203279

15
16 **OPPOSER’S RESPONSE TO APPLICANT’S**
17 **MOTION TO COMPEL DISCOVERY AND TO RESET TRIAL SCHEDULE**

18 Opposer 3D International, LLC (“3D”), by its attorney Thomas Cook, submits this brief
19 in response to **APPLICANT’S MOTION TO COMPEL DISCOVERY AND TO RESET**
20 **TRIAL SCHEDULE** (the “Motion” filed by Applicant Palm Beach Motoring Accessories, Inc.
21 on January 27, 2014). To the extent the following facts are asserted by counsel for 3D in this
22 matter, counsel has personal knowledge of all matters set forth herein.

23 The facts set forth in Applicant’s Motion, and in the DELCARATION OF LEO ZUKER
24 IN SUPPORT OF APPLICANT’S MOTION TO COMPEL DISCOVERY AND TO RESET
25 TRIAL SCHEDULE (the “Zucker Declaration”) are correct so far as they go. What Applicant
26 and its counsel have omitted from its Motion and the Declaration which might be helpful in
27 deciding Applicant’s Motion are (1) the conversation between the Mr. Zucker and myself about
28 this discovery, and (2) our email exchange about this discovery. More specifically:

1. Telephone Call - On January 24, 2014, I, Thomas Cook, as the attorney for Opposer, became concerned that the U.S. Post Office may have misdirected Opposer's discovery responses. I had already received the email dated January 22, 2014 from Mr. Zucker, attorney for Applicant (see Exhibit 3 to the Zucker Declaration). I therefore called Mr. Zucker to confirm receipt of Opposer's discovery responses. In the conversation between myself and Mr. Zucker, Mr. Zucker confirmed Opposer's discovery responses had been received, but Mr. Zucker said nothing about the responses substantively.

2. Email Exchange - On January 24, 2014, I emailed Mr. Zucker to thank him for confirming receipt of Opposer's discovery responses. See Exhibit 1 attached to this Response. On January 25, 2014, Mr. Zucker returned my email of January 24 about receipt of Opposer's discovery responses. See Exhibit 2 attached to this Response.

A motion to compel must include a copy of the request for discovery and the response thereto, as specified in 37 CFR § 2.120(e). This Mr. Zucker has done in Applicant's Motion. However:

"In addition, the motion to compel disclosures or discovery must be supported by a written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney *the issues presented in the motion*, and has been unable to reach agreement" (emphasis supplied).

TBMP 523.02 *Special Requirements for Motion*.. This Mr. Zucker has not done.

In his Declaration, Mr. Zucker provides the reason for Applicant's Motion when he states he "...believes certain of the (Opposer's) responses are deficient as explained below and by way of the referenced exhibits." However, upon receiving the Declaration, Opposer and I have for the first time learned of these perceived deficiencies. As I note above, Mr. Zucker said nothing about Opposer's responses substantively in our telephone discussion of January 24, 2014. And while I thanked him for confirming Opposer's discovery responses by email on January 24, 2014,

1 and he returned my email the next day, Mr. Zucker again said nothing substantively about
2 Opposer's discovery responses. This is where our file ends and, of course, Applicant's Motion
3 was filed two days later, on January 27, 2014.

4 Opposer has no difficulty working with Applicant if Mr. Zucker thinks Opposer's
5 discovery responses are "deficient." However, Opposer cannot work with Applicant if Opposer
6 has not been advised of the perceived deficiencies. On behalf of Opposer, I can now discuss with
7 Mr. Zucker Applicant's objections to Opposer's discovery responses. In the meantime, however,
8 the Board need not be involved with discovery issues. Applicant's **MOTION TO COMPEL**
9 **DISCOVERY AND TO RESET TRIAL SCHEDULE** is somewhat premature, and so it
10 should therefore be denied.

11 Opposer has no objection to a suspension or extension of time as necessary to decide
12 Applicant's Motion.

13
14 Respectfully submitted,

15
16 


17 Date: January 27, 2014

18 Thomas W. Cook, Reg. No. 38,849
19 Attorney for Opposer
20 3030 Bridgeway, Suite 425-430
21 Sausalito, California 94965
22 Telephone: 415-339-8550

23 **CERTIFICATE OF ELECTRONIC FILING**

24 I hereby certify that this document is today being submitted via electronic filing utilizing
the ESTTA system on:

25 Date: January 27, 2014

26 
27 Thomas W. Cook
28

1
2 **CERTIFICATE OF SERVICE BY U.S. MAIL, 37 C.F.R. §2.119(a)**

3 I hereby declare:

4 I am over the age of 18 years, and am not a party to the within cause. I am employed in
5 Sausalito, California.

6 My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My
7 mailing address is P.O. Box 1989, Sausalito, California.

8 On the date first written below, I served a true copy of the attached documents entitled:

9 **OPPOSER'S RESPONSE TO APPLICANT'S**
10 **MOTION TO COMPEL DISCOVERY AND TO RESET TRIAL SCHEDULE**

11 on the attorney for Applicant by placing it in a sealed envelope and depositing it in the United
12 States mail, first class postage fully prepaid, addressed to the following:

13 LEO ZUCKER
14 LAW OFFICE OF LEO ZUCKER
15 PO BOX 1177
16 YORKTOWN HEIGHTS, NY 10598-8177
17 UNITED STATES

18 I declare under penalty of perjury that the foregoing is true and correct. Executed at
19 Sausalito, California on January 27, 2014.



Thomas Cook

20 **CERTIFICATE OF SERVICE BY EMAIL**

21 On the same date, I served a true copy of the attached document on Applicant's attorney
22 by email, consistent with the agreement of Applicant and Opposer regarding service by email
23 dated April 25, 2012, to: lzpatents@gmail.com

24 I declare under penalty of perjury that the foregoing is true and correct. Executed at
25 Sausalito, California .

26 January 27, 2014



Thomas W. Cook

Subject: Re: 3D v. PBMA "Autopia" oppositions - PBMA's First Set of Discovery Requests
From: Thomas Cook <tom@thomascooklaw.com>
Date: 1/24/2014 11:07 AM
To: Leo Zucker <lzpatents@gmail.com>

Leo:

Many thanks for confirming receipt of 3D's discovery responses by telephone today.

Kind regards,

Thomas.

-
--

Thomas Cook Intellectual Property Attorneys

P.O. Box 1989, 3030 Bridgeway, Suite 425-430
Sausalito, California 94965-1989
Telephone: 415-339-8550

On 1/22/2014 7:25 PM, Leo Zucker wrote:

Thomas,

Per your e-mail below, you indicated 3D's responses to PBMA's discovery requests were served by US mail on Jan 16. Since we had no agreement or order extending 3D's time to respond, the service date would be two days late and any objections to the discovery requests would have been waived.

We have not yet received 3D's responses by US mail, and discovery was last reset by the TTAB to close on Jan 26. Therefore, please note that if full responses are not received by this Friday Jan 24, PBMA will have no choice but to file a motion to compel the responses without objections, and to impose such sanctions as the TTAB deems proper under the circumstances.

Leo

/Law Office of Leo Zucker /

/Patent & Trademark Law /

PO Box 1177

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EXHIBIT 1

Subject: 3D v. PBMA "Autopia" oppositions
From: "Leo Zucker" <lzpatents@gmail.com>
Date: 1/25/2014 10:37 AM
To: <tom@thomascooklaw.com>

OK Thomas,

I believe you mentioned 3D is presently reviewing our proposed settlement terms. We look forward to resolving this conflict with a mutually beneficial settlement at an early date.

Best regards,
Leo

Law Office of Leo Zucker
Patent & Trademark Law
PO Box 1177
Yorktown Heights, NY 10598

Tel (914) 302-2460
Fax (914) 302-2459

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-----Original Message-----

From: Thomas Cook [mailto:tom@thomascooklaw.com]
Sent: Friday, January 24, 2014 2:07 PM
To: Leo Zucker
Subject: Re: 3D v. PBMA "Autopia" oppositions - PBMA's First Set of Discovery Requests

Leo:

Many thanks for confirming receipt of 3D's discovery responses by telephone today.

Kind regards,

Thomas.

-
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Thomas Cook Intellectual Property Attorneys P.O. Box 1989, 3030 Bridgeway, Suite 425-430 Sausalito, California 94965-1989
Telephone: 415-339-8550

EXHIBIT - 2